

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)	
DTE GAS COMPANY for)	
approval of a gas cost recovery plan, five-year)	Case No. U-17691
forecast and authorization of gas cost recovery)	
factors for the 12-month period ending)	
March 31, 2016.)	
_____)	

At the January 31, 2017 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman
Hon. Norman J. Saari, Commissioner
Hon. Rachael A. Eubanks, Commissioner

ORDER DENYING REHEARING

On December 30, 2014, DTE Gas Company (DTE Gas) filed an application, with supporting testimony and exhibits, requesting approval of its gas cost recovery (GCR) plan and factors for the 12-month period ending March 31, 2016. One of the issues in that proceeding was whether the Commission should require DTE Gas to adjust its pipeline capacity reservation charge as the Retail Energy Supply Association (RESA) proposed. RESA had recommended separate reservation charges for gas customer choice (GCC) and GCR customers that would be adjusted and reconciled based on the value each group realizes from DTE Gas's capacity assets. In its November 22, 2016 order (November 22 order), the Commission agreed with the Administrative Law Judge Mark D. Eyster (ALJ) and adopted the reasoning and conclusions of the proposal for

decision granting RESA's requested reservation charge proposal. In the November 22 order, the Commission further concluded that RESA's proposal amounts to a discount for GCC customers of 30% of the reservation charge, with GCR customers being held responsible for the balance of the reservation charge.

DTE Gas's Petition for Rehearing

On December 22, 2016, pursuant to Mich Admin Code, R 792.10437(1) (Rule 437), DTE Gas filed a petition for rehearing of the November 22 order. In its petition, DTE Gas contends that, because there is no evidence in the record that supports a 30% discount from the reservation charge for GCC customers, the Commission's approval fails to comply with the Administrative Procedures Act of 1969, MCL 24.201 *et seq.* (APA) and constitutes reversible error. DTE Gas's petition for rehearing, p. 2. Additionally, DTE Gas argues that the November 22 order omits material details necessary to implement the 30% discount for GCC customers such as the calculation methodology, timing, and reconciliation methodology, thus rendering the order "void for vagueness" and a violation of the company's due process rights. *Id.*

DTE Gas asserts that, unless the Commission provides clarification of its November 22 order that includes the requisite material details for implementing the 30% discount for GCC customers, the November 22 order will violate the company's due process rights. The company contends that there are at least two methods to calculate the 30% discount for GCC customers and asks that the Commission clarify its November 22 order by selecting DTE Gas's preferred method. In addition to the method for calculating the discount, DTE Gas argues that the Commission's failure to specify an effective date for implementing the discount leaves the company uninformed as to when to implement it. DTE Gas prefers and plans to implement the 30% discount for GCC customers beginning April 1, 2017 as part of its 2017-2018 GCR plan filing in December 2016. Thus DTE

Gas requests that, if the Commission does not reverse its November 22 order regarding the 30% discount, then the Commission should clarify that the implementation of the discount for GCC customers effective April 1, 2017, comports with the November 22 order.

Next, DTE Gas indicates that there are different methods that the company can use to reconcile the separate reservation charges. The company expresses a preference for construing the November 22 order to mean that “after the GCC customers’ Reservation Charge is calculated for a GCR year that GCR customers would be responsible for making up any differences produced by variability in sales volumes or actual expenses.” *Id.*, p. 7. DTE Gas explains that, under this method, GCC customers would not have a separate over- or undercollection balance, rather the GCC reservation charge would be included in the GCR customers’ reservation charge reconciliation. The utility prefers this method because the discount obviates the “equity concern” regarding a separate balance and associated interest calculation and is a simpler calculation. DTE Gas indicates that, because the November 22 order is unclear as to how to reconcile the charge, it plans to use the above-specified method and requests that the Commission clarify that DTE Gas’s utilization of this method comports with the November 22 order.

The utility further asserts that, without knowing which methods or how to allocate underlying costs, DTE Gas cannot forecast GCR year ending over- or underrecoveries for the reservation charge for each customer class and it cannot accurately forecast an over- or undercollection for these customers when setting the GCR rate. In this regard, the utility claims its GCR and reservation charge rate setting is “effectively flying blind” with respect to forecasted year-end balances. It claims this is a violation of its due process rights. Thus, it explains that, absent clarification by the Commission prior to DTE Gas’s filing of its 2017-2018 GCR plan case by December 31, 2016, it will develop its proposed maximum GCR factor and reservation charges

based on its interpretation of the November 22 order. In summary, the utility requests that the Commission grant rehearing and reverse the decision in its November 22 order for a 30% discount from the reservation charge assessed to GCR customers. In the alternative, DTE Gas requests that the Commission grant rehearing to clarify its November 22 order so that the company's implementation of the 30% discount comports with the order.

Retail Energy Supply Association's Answer

RESA disagrees with DTE Gas's claim that the Commission's ruling was "reversible error" because it fails to comply with the APA. RESA states that the record is full of testimony and exhibits in support of a capacity reservation charge adjustment, including the expert testimony of Daniel Dishno, Director of Gas Supply at Interstate Gas Supply, Inc., who quantified the value that GCR customers receive from the capacity assets and who recommended the approximately 30% discount adjustment for GCC customers to reflect the reduced gas supply costs that GCR customers receive from capacity assets that GCC customers do not receive. Mr. Dishno testified regarding the spread value, or the difference in price between buying remote gas and transporting it to DTE Gas's city-gate via pipeline capacity assets and the price of buying city-gate gas. He explained why the utility's use of its capacity assets to reduce its cost of gas for GCR customers does not allow GCC customers to similarly benefit.

RESA explains that, to remedy the inequity that comes from GCC customers subsidizing GCR customers through the reservation charge, Mr. Dishno proposed a separate charge for GCC and GCR customers. Mr. Dishno determined the total pipeline spread value by examining each capacity contract, using DTE Gas's planned gas volumes to be transported along that pipeline, identifying the market prices at each pipeline point, and incorporating DTE Gas's variable costs. In determining the revised capacity charges for GCR and GCC customers, Mr. Dishno allocated a

pro rata share of the total pipeline spread value to both GCR and GCC customers based on sales volumes. RESA then recommended a forecasted reservation charge of \$0.179 per thousand cubic feet (Mcf) for GCC customers and \$0.285 per Mcf for GCR customers. RESA argues that this difference between DTE Gas's proposed overall average capacity reservation charge and Mr. Dishno's proposed projected capacity reservation charge for GCC customers is 31.6% or approximately 30%. Thus, RESA claims that the record evidence supports the Commission's approval of the reservation charge adjustment in its November 22 order.

With respect to DTE Gas's second argument on rehearing that the Commission's November 22 order violates the company's due process rights because it is "void for vagueness," RESA disagrees. RESA first argues that DTE Gas's reliance on "void for vagueness" federal case law is misplaced. RESA distinguishes the federal case law that DTE Gas relies upon in its petition for rehearing explaining that that case was limited to a different factual situation where a regulatory agency imposed fines for failure to comply with new federal regulations adopted after the sanctioned conduct occurred. It explains that in the GCR plan proceeding at issue here, all rates are subject to adjustment until approved and GCR rates are subject to further adjustment in subsequent reconciliation cases. Further, RESA points out that the regulatory framework for approval and review of a GCR plan case has not changed during the pendency of this case. RESA also points out that, unlike the federal case cited, this is not an enforcement proceeding. RESA explains that no party has suggested DTE Gas should not fully recover its reasonably and prudently incurred pipeline capacity reservation costs in 2015-2016 or future plan years. Rather, the issue is primarily about cost allocation of the pipeline capacity reservation charge among two classes of customers, GCC customers and GCR customers. And, RESA contends there is no unconstitutional deprivation of life, liberty, or property in the November 22 order resulting from

the Commission's approval of the capacity reservation charge adjustment. RESA concludes that, because the federal case DTE Gas cited does not apply here, there is no valid claim of legal error that would provide a basis for granting rehearing.

Next, RESA urges the Commission to deny DTE Gas's motion for clarification of its November 22 order. RESA asserts that the Commission only had one calculation method presented in the evidentiary record before it when it considered and approved the adjustment, the calculation provided in RESA's Exhibit RES-1 (DDS-1), which is consistent with DTE Gas's Example A in its petition for rehearing. RESA explains that, because no party proposed a 30% adjustment consistent with DTE Gas's Example B method, the Commission should reject this method for calculating the 30% discount.

Regarding the effective date for implementing the discount, RESA adamantly objects to DTE Gas's request to make the GCC discount effective April 1, 2017, which is the beginning of DTE Gas's 2017-2018 plan year. According to RESA, because it presented its proposed adjustment in the utility's 2015-2016 GCR plan case and the Commission approved it in that plan case, the Commission's November 22 order is for DTE Gas's 2015-2016 capacity reservation charges and should be applied effective April 1, 2015, the start of DTE Gas's 2015-2016 gas year. RESA argues that it is not necessary for the utility to retroactively reissue customer bills. Rather, the Commission routinely orders actual refunds which are efficiently implemented prospectively on future customer bills. Because the company's 2015-2016 plan year is subject to reconciliation, RESA points out that, as part of its reconciliation, DTE Gas can determine with certainty what its capacity costs were in 2015-2016, what the relative GCC and GCR volumes were in 2015-2016, and calculate a 30% discount consistent with the November 22 order. RESA explains that any over or underrecovery, plus interest, becomes part of a true-up mechanism applied to future

capacity reservation charges for each class of customers. In lieu of refiling its 2015-2016 GCR reconciliation case to implement the November 22 order for the 2015-2016 gas year, RESA recommends that the utility file revised testimony in the case as has been done in the past. Thus, RESA urges the Commission to reject DTE Gas's proposal to delay and deny GCC customers the rate relief the Commission ordered.

Finally, regarding DTE Gas's claim that the Commission failed to prescribe a reconciliation methodology for the 30% discount, RESA urges the Commission to reject DTE Gas's claim. RESA argues that this is a new issue that is not before the Commission and not ripe for review. It maintains that the GCR plan case is not the correct forum to raise reconciliation issues that were not raised in the plan case. According to RESA, this request is tantamount to an attempt to obtain pre-approval of its preferred reconciliation methodology without vetting the issue during a contested case process where parties can fully review and analyze reconciliation issues.

Moreover, RESA contends that it is not reasonable to assume the Commission has altered its previously-stated policy directing separate reconciliations for GCC and GCR reservation charges absent an affirmative statement by the Commission to that effect. Additionally, RESA indicates that this proposal raises important issues that should be examined further in future proceedings.

Last, with respect to DTE Gas's arguments that suggest, without the Commission's clarification of its November 22 order, the company cannot forecast GCR year ending balances and appropriately set the GCR rate, RESA merely notes that any Commission directive in a GCR plan or reconciliation case can have a ripple effect through subsequent GCR plan and reconciliation cases. RESA points out that future rates and filings can be adjusted to give effect to Commission directives. Accordingly, RESA urges the Commission to deny DTE Gas's motion for clarification as well as its petition for rehearing.

Discussion

Rule 437 of the Commission's Rules of Practice and Procedure provides that an application for rehearing may be based on claims of error, newly discovered evidence, facts or circumstances arising after the hearing, or unintended consequences resulting from compliance with the order. An application for rehearing is not merely another opportunity for a party to argue a position or to express disagreement with the Commission's decision. Unless a party can show the decision to be incorrect or improper because of errors, newly discovered evidence, or unintended consequences of the decision, the Commission will not grant a rehearing.

As discussed below, the Commission finds that DTE Gas has failed to meet its burden of demonstrating legitimate grounds for granting rehearing on any of the issues presented in its petition. Thus, the request for rehearing should be denied.

DTE Gas first argues that the Commission's November 22 order fails to comply with the APA because the Commission's approval of a 30% discount is not supported by the record evidence in this case. The Commission disagrees. In the November 22 order, the Commission adopted the ALJ's reasoning and conclusions on this issue. Beginning on page 41, the PFD explained DTE Gas's responsibility to serve as the supplier of last resort for its GCR and GCC customers. It discussed the utility's annual projected reservation costs and total transportation costs, as well as the company's five-year forecast of its reservation charges for firm pipeline capacity. It also considered RESA's proposal, and discussed at length the testimony of Mr. Dishno explaining the market spread value, Mr. Dishno's model used to identify the amount of reduced costs GCR customers receive because of DTE Gas's capacity assets for GCR deliveries, as well as Mr. Dishno's recommendation for an approximately 30% discount for GCC customers. In addition, the PFD set forth the positions of the parties on this issue, as well as its findings and conclusions.

In the PFD's discussion section, the ALJ provided a thorough history of past Commission decisions that addressed the origins and the further refinement of DTE Gas's pipeline reservation capacity charge. The ALJ considered RESA's proposal in this proceeding to be an attempt to comply with the Commission's directive in Case No. U-17332, that going forward, the allocation of pipeline reservation costs must be equitable and accurate and that the amount of the charge should be reviewed in plan cases to make sure it is appropriate based on actual operations and expenses, and is commensurate with the benefits afforded by the supplier of last resort service for both GCR and GCC customers. PFD, pp. 52-53. The PFD found the proposal of two separate reservations charges to be reasonable. In approving the proposal, the ALJ specifically opined, "As the Commission has already made clear, in future cases, DTE Gas is expected to cooperate in the development of an equitable and accurate mechanism that best ensures the reservation charge is appropriately based on actual operations and expenses and is commensurate with the benefits afforded by supplier of last resort service for both GCR and GCC customers." *Id.*, p. 53. Thus, the ALJ recommended approval of RESA's proposal while recognizing the Commission's past directive that DTE Gas should cooperate in further cases to best allocate reservation charge costs so that they are fair, accurate, and commensurate with the benefits provided.

The Commission adopted the PFD's reasoning and conclusions based on the evidentiary record in this proceeding and the modeling and recommendations Mr. Dishno provided in his direct and rebuttal testimony and accompanying exhibits. The Commission relied on record evidence¹ to determine the approximate percentage of the adjustment recommended by Mr. Dishno, which the Commission found was 30%. Though the Commission viewed the use of a percentage discount to resolve the complexities presented by flat fee reservation charges, this does

¹ See Exhibit RES-1; 4 Tr 530-531.

not mean the Commission did not reach its determination on the basis of the evidentiary record before it, considering and agreeing with RESA's testimony, exhibits, and arguments in favor of the adjustment. Further, because the Commission adopted the PFD's recommendation, it also adopted the PFD's instruction that DTE Gas cooperate in future cases to continue to ensure the allocation of pipeline capacity reservation charge costs is fair, accurate, and commensurate with the benefits provided by the supplier of last resort service. Because the Commission's decision to adopt the PFD's recommendation and approve the recommended adjustment, albeit in a percentage format, was based on the record evidence before it, the Commission finds no legal error that necessitates a grant of rehearing.

Next, DTE Gas argues that the November 22 order violates its due process rights because the order is "void for vagueness." The Commission disagrees. The Commission first notes that the November 22 order did not result in any deprivation of DTE Gas's property because, as RESA points out, no party is alleging that DTE Gas is being deprived of the pipeline capacity reservation charge. The issue is the cost allocation of that charge between different classes of customers who receive disparate benefits. Second, because the Commission approved of the adjustment that RESA recommended and proposed, it adopted RESA's proposed calculation of the separate reservation charges, consistent with DTE Gas's "Example A" in its petition, which is found in Exhibit RES-1.

With respect to the date the approved adjustment would become effective, RESA is correct that the Commission's decision was for the 12-month GCR plan year period ending March 31, 2016, as noted in the order's caption. Accordingly, the effective date of its implementation would be the start of the GCR plan year, or April 1, 2015. This cost allocation may be trued up during the GCR reconciliation proceeding for the 2015-2016 plan year.

Regarding DTE Gas's argument that the Commission failed to determine the correct methodology to be used in reconciling the two reservation charges, the Commission likewise agrees with RESA that this is a reconciliation issue that was not raised in this GCR plan case and is not yet ripe for review. Accordingly, the Commission declines to decide a new issue at the rehearing phase of this proceeding on a matter not yet before it.

Finally, with respect to DTE Gas's argument that it is unable to forecast the GCR year ending over- or underrecoveries for the reservation charges for each customer class without the clarification requested and cannot accurately forecast an over- or undercollection to use when setting the GCR rate, the Commission agrees with RESA that adjustments can be made in future rates and filings as needed to comply with the November 22 order. Because the Commission is not persuaded that its November 22 order is void for vagueness, deprives DTE Gas of its due process rights, and is not supported by the record, the Commission finds no legal error that necessitates granting a rehearing.

THEREFORE, IT IS ORDERED that the petition for rehearing filed by DTE Gas Company is denied.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel.

Electronic notifications should be sent to the Executive Secretary at mpscdockets@michigan.gov and to the Michigan Department of the Attorney General – Public Service Division at pungpl@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General – Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

Sally A. Talberg, Chairman

Norman J. Saari, Commissioner

Rachael A. Eubanks, Commissioner

By its action of January 31, 2017.

Kavita Kale, Executive Secretary